

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**  
**February 25, 1997**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

NELDA FAYE YOUNG	)	SULLIVAN COUNTY
	)	03A01-9607-JV-00234
Petitioner-Appellant	)	
	)	
v.	)	HON. JAMES BEELER
	)	SPECIAL JUDGE
	)	
TERESA YOUNG FRAZIER and	)	
JONATHAN LYNN FRAZIER	)	
	)	
Respondents-Appellees	)	
	)	
IN THE MATTER OF:	)	
Samantha Lynn Frazier, A	)	
Child under 18 Years of Age	)	REVERSED AND REMANDED

STEPHENSON TODD OF KINGSPORT FOR APPELLANT

NO BRIEF FILED BY THE APPELLEES

O P I N I O N

Goddard, P.J.

Nelda Faye Young appeals a judgment of the Juvenile Court for Sullivan County which found that her daughter, Teresa Young Frazier, and her former son-in-law, Jonathan Lynn Frazier, had abandoned their daughter, Samantha Lynn Frazier, who was born on April 11, 1991, but denied Mrs. Young's petition to terminate parental rights upon the ground that such was not in the best interest of Samantha.

Mrs. Young's single issue insists that the evidence preponderates against the Trial Court's finding relative to Samantha's best interest.

At the outset we point out that the parents of Samantha have filed no appellate brief and, consequently, no issue is raised as to the Trial Court's finding of abandonment. Parenthetically, we note that the record fully supports the Trial Court's determination in this regard.

We will now detail the facts necessary for disposition of the issue raised in this appeal. Samantha, who, as already noted, was born April 11, 1991, has been under the auspices of the Juvenile Court for Sullivan County since September 11, 1991, when Mrs. Young filed a petition seeking to have Samantha declared a dependent and neglected child. This petition was resolved by an informal adjustment agreement dated October 9, which provided that CASA--Court Appointed Special Advocates of Sullivan County--would supervise and monitor Samantha for a period of time and the parents attend and complete parenting classes and family counseling at Holston Services. On December 5, a motion was filed by the Director of Court Services seeking to revoke the informal adjustment agreement because of non-compliance by the parents. Whereupon, the Juvenile Court Referee ordered the parents to honor their commitment under the informal agreement.

On March 24, 1992, a second petition was filed by Mrs. Young, again seeking a determination that Samantha, who was then 11 months old, was a dependent and neglected child. This

petition was sustained by order entered March 25, which also granted Mrs. Young temporary custody of Samantha, which she has since maintained. Other petitions were filed by the parents seeking custody, and by Mrs. Young. However, it is not necessary to elaborate on these matters in our resolution of this appeal.

Because of the parents' refusal or inability to comply with the orders of the Court relative to counseling and cooperation with those appointed by the Court to monitor the situation, Mrs. Young, on October 24, filed a petition to terminate parental rights.

Still later, on February 1, 1995, Mrs. Young filed a petition in the Chancery Court for Sullivan County, seeking to adopt Samantha.

The Court's order finding that it was not in Samantha's best interest is in two parts. The first, entered on the 9th day of November 1995, stated the following:

- A. The maternal grandmother testified that the father's rights would be finished if the relief were granted but indicated an intention of continued relations with her daughter and stated a possibility of her daughter having custody upon the grandmother's eventual death. This seems to express a relative preference for her daughter over the father, which is unjustified by the facts and seems mildly collusive.
- B. The effect of this termination and the subsequent adoption would sever all paternal family relations and give the maternal grandmother sole, unquestionable authority over the child and relations with the other maternal family members. This severance of relations would include the maternal grandfather since he and the petitioner are divorced. This would cause additional tension since the mother of the child resides in his home.

- C. The grandmother intends to maintain the child in the same circle of people and this termination and subsequent adoption would change only the power structure within that circle. The child would be subjected to incredible conflicts between her biological mother and her adoptive mother; this could not fail to injure her development.
- D. There is nothing to be gained here by termination as opposed to custody and there is, in this Court's opinion, absolute certainty that loss will occur to the child due to intensified and extended family conflict if termination should occur.
- E. All findings are made with the understanding of the placement of burden of proof and with understanding of the requirement of clear and convincing evidence. This opinion is based upon the observation of the demeanor of the parties as well as express testimony.

Thereafter, Mrs. Young petitioned the Court to vacate the earlier order and hear additional proof, which was granted. Thereupon, additional proof was received and the Court reaffirmed its earlier order and stated the following:

This matter came on to be heard before the Court on the request of the parties to present additional evidence as to best interest of the child and upon the testimony of the parties and their witnesses from all of which the Court finds as follows:

1. The expert witness for Faye Young testified that it is in the best interest of the child to know where home is and who mother is on a long term basis and that it does not matter where that home is or who is designated as mother so long as no other family members create dissension about that issue.

2. The natural mother by her questions and demeanor made it abundantly clear that she does intend to cause dissension on that issue for the child.

3. The grandmother, Faye Young, testified that if dissension arose that she would abandon all family members if necessary to protect the child. This does not appear to be feasible in that she would have to abandon her other children, who are siblings of the natural mother in this case, as well as extended family members. This Court does not believe that this situation could manifest itself and even if it did so occur, the situation itself would be harmful to the

child as she would be deprived of interaction with all family members.

4. The Court finds that all matters set out in the order of October 18, 1995 and in the supplemental and final order of November 8, 1995<sup>1</sup> still exist and that the termination is not in the best interest of the child and the supplemental and final order dated November 8, 1995, which was previously set aside, is now reinstated in full force and effect.

5. The Court finds that contact between the parents and the child would be harmful to the child in light of the expert testimony and in light of the findings of this court in previous orders. All requests for visitation are therefore dismissed and the child shall remain in the sole custody of the grandmother, Faye Young.

In all deference to the Trial Court, we conclude that the evidence preponderance against his best interest finding. We reach this conclusion because of the following facts: (1) the testimony of Dr. Ted Hagan, a licensed psychologist, who did not interview either Samantha, the parents, nor Mrs. Young, but, based upon the information furnished him<sup>2</sup> regarding the facts of this case, was of the opinion that it was in Samantha's best interest that the parental rights be terminated; (2) the recommendation of CASA to the same effect; (3) the testimony of Mr. Young, divorced husband of Mrs. Young, father of Teresa and grandfather of Samantha, with whom Samantha, her mother, and two of Samantha's younger siblings were then living, that the parental rights should be terminated; (4) the strong recommendation of the guardian ad litem, both at the best interest hearing and afterwards in a letter to the Court, that it was in the best interest of Samantha that parental rights be terminated.

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<sup>1</sup> This order is dated November 8, but entered on November 9, 1995.

<sup>2</sup> No insistence was made at the trial level that the information furnished was inaccurate.

We also think it significant that the only testimony introduced contra to the foregoing was that given by Sandy Fisher, an employee of First Tennessee Human Resource Agency, a private agency which contracts with the State to render service in the area of family preservation. Ms. Fisher was of the opinion that it was in the best interest of Samantha that parental rights not be terminated. However, the validity of her opinion is suspect because her only involvement with Samantha's mother and father was a four-week period in June and July 1992.

It would appear the Trial Court gave undue consideration to the fact that the mother, who was estranged from Mrs. Young at the time of the hearing, might possibly reconcile and enjoy a relationship with Samantha--which had been only minimal since Samantha came under the care of Mrs. Young. The Trial Court concluded that this would be unfair to the father because there is little or no likelihood that such a relationship between the father and Samantha would ever be permitted.

We can understand the Trial Court's concern as to the father; however, the paramount interest is not the father, but the welfare of Samantha, and, in our view the recommendation of CASA to the Court by letter dated October 25, 1995, sums up our thoughts regarding this case:

Samantha has been in the custody of her maternal grandmother, Faye Young, since prior to her first birthday. She has been provided with a loving and secure home since that time. We think that it is time that Samantha also be provided with the security of the permanency of this home. CASA in no way can see that her best interest could be served by keeping her in the "system" and continually subjected to the stress and uncertainty of further court hearings.

Before concluding, we are aware that the Trial Judge's first order relative to termination of parental rights entered on November 9, 1995, recites that his opinion is "based upon the observation of the demeanor of the parties, as well as express testimony," and that appellate courts ordinarily defer to the trial court when it assesses the credibility of witnesses based upon its observation of the witnesses while testifying. However, in the present case the opinions being expressed are based for the most part on undisputed facts, thus, undermining the deference ordinarily accorded a trial court in such cases.

For the foregoing reasons the judgment of the Trial Court is reversed and the parental rights of the parents as to Samantha are terminated. The cause is remanded for such further proceedings, if any, as may be necessary and collection of costs below, which are, as are costs of appeal, adjudged against the Fraziers.

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Houston M. Goddard, P.J.

CONCUR:

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Charles D. Susano, Jr., J.

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Clifford E. Sanders, Sp.J.